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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: CMC & Maintenance, Inc.

File: B-292081

Date: May 19, 2003

Michael McCue for the protester.

C. Gordon Jones, Esq., Department of the Air Force, for the agency.

Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In evaluating past performance, agency's assignment of neutral rating for past performance to the protester was reasonable where the protester's referenced past performance was either of far less magnitude than, or different from, the work being solicited.
2. Agency is not required to refer a neutral past performance evaluation to the Small Business Administration for a possible certificate of competency.

DECISION

CMC & Maintenance, Inc. protests the award of a contract to Navales Enterprises, Inc. under request for proposals No. F64605-02-R-0026, issued by the Department of the Air Force for custodial services at Hickam Air Force Base in Hawaii. CMC challenges the agency's past performance evaluation and selection of a higher priced proposal, and argues that it was found nonresponsible without referral to the Small Business Administration (SBA) for a possible certificate of competency (COC).

We deny the protest.

The RFP, issued June 7, 2002 as a competitive Historically Underutilized Business Zone (HUBZone) set-aside, contemplated award of a fixed-price contract for 1 base year with four 1-year options. The solicitation provided for a "best value source selection," based on a comparison of past performance and price/cost, which were said to be approximately equal in weight. RFP at 143. The possible past performance ratings were exceptional/high confidence, very good/significant

confidence, satisfactory/confidence, neutral/unknown confidence, marginal/little confidence, and unsatisfactory/no confidence. RFP at 145.

The RFP provided that past performance would be evaluated for “currency and relevancy (*i.e.*, scope and magnitude),” and for each contract identified, offerors were to explain “how that effort is relevant and similar in scope and magnitude to the effort required by this solicitation.” RFP at 142-144. Although not defined in the RFP, in evaluating past performance, “scope” was considered to be “performing the quality, quantity and level of custodial duties essentially similar to that of the Statement of Work,” and “magnitude” was considered to be “50% of the annual government estimate, or a minimum of \$600,000” per year, “[i]n order to not restrict competition among the [HUBZone] Offerors and maintain the requirements of the RFP.” Agency Report, Tab 7A, Proposal Evaluation Report, Past Performance Evaluation, at 1.

By the closing date of August 13, 24 offerors submitted proposals, which included past performance references. CMC submitted three past performance references, all of which the agency found to be current (*i.e.*, performed within the past 3 years), but none of which were found to be relevant because they were not of the same “scope and magnitude” as required by the RFP. The agency found that two of CMC’s contracts for janitorial and general cleaning provided “essentially similar” services, but that the dollar value of the contracts (approximately \$200,000 and \$100,000 per year) was far less in magnitude than \$600,000 per year. A third contract was found sufficient in magnitude, but not in scope, since the services provided were for operations and maintenance, not custodial services. Since the agency found that none of CMC’s contracts were sufficiently similar in both scope and magnitude, it determined that the contracts were not relevant and gave CMC a “neutral/unknown confidence” rating for past performance.¹ Agency Report, Tab 7A, Proposal Evaluation Report, Past Performance Evaluation, at 16-17.

Navales submitted five references, all which were found to be current and relevant, that is, meeting the scope and magnitude requirements. The agency rated Navales’s past performance as “very good/significant confidence,” noting strengths such as Navales’s “strong top management, excellent administrative support and experienced project managers.” The agency determined that Navales’s past performance left “little doubt of the capability and reliability of performance of the [Statement of Work],” while, in contrast, there was “concern whether [CMC] is able to meet the scope and magnitude of the RFP having provided no relevant

¹ The definition of neutral/unknown confidence is “[n]o performance record identifiable.” RFP at 145.

performance ratings for review.”² Agency Report, Tab 9, Source Selection Decision, at 6.

The agency recognized that CMC proposed the lowest price of all offerors at almost 43 percent below the government estimate of approximately \$6.8 million.³ Navales’s price, while still below the government estimate, was approximately 7 percent, or \$290,000, higher than CMC’s. However, given its higher-rated past performance, including its specific strengths, Navales’s proposal was found to present the “best value” to the government and was selected for award. Agency Report, Tab 9, Source Selection Decision, at 5-6. This protest followed.

CMC contends that the agency’s neutral rating for its past performance was improper because the agency could not have properly determined that only contracts that had a “magnitude” exceeding \$600,000 per year and a “scope” including custodial services were relevant, since the RFP failed to provide these definitions of scope and magnitude.

As indicated above, the RFP clearly informed offerors that both “scope and magnitude” would be considered in determining relevance, and this reasonably includes consideration of contracts of similar dollar size and services. In our view, the agency was not unreasonable in determining that contracts less than 50 percent of the annual government estimate were too small to be relevant, or that contracts unrelated to custodial services were similarly not relevant. Given that CMC did not submit a single past performance reference of similar scope and magnitude to that of the RFP, the agency’s rating of neutral was reasonable. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4-5.⁴ CMC’s disagreement with the agency’s judgment on this point is insufficient to show it was unreasonable. Westinghouse Gov’t and Env’tl. Servs. Co., Inc., B-280928 et al., Dec. 4, 1998, 99-1 CPD ¶ 3 at 17.

CMC next contends that the agency should have held communications or discussions to provide CMC with an opportunity to better explain the relevance of its past performance references, or to provide additional references. Here, however,

² Of the 24 proposals, 16 offerors submitted relevant past performance and received satisfactory or better ratings. Agency Report, Tab 9, Source Selection Decision, at 5.

³ However, CMC’s pricing was also found to contain mathematical errors and miscalculations. Agency Report, Tab 7B, Pricing Report, at 7.

⁴ CMC also contends that it was unreasonable for the agency to rate its past performance neutral, when the references provided “positive” ratings. However, given that these ratings were not for relevant contracts, they were properly not considered. Ostrom Painting & Sandblasting, Inc., supra, at 4.

the nature of the contracts referenced by CMC was clear, so we cannot see any basis to require communications with CMC on this point. Ostrom Painting & Sandblasting, Inc., supra, at 5 n.3. While CMC contends that it would have explained that it holds contracts with “many, many Federal Facilities” under which “it provides similar services . . . that are as diverse and even more complicated than what is required at Hickam [Air Force Base],” Protester’s Comments at 1, CMC has failed to provide any details or otherwise explain how these contracts are of similar scope or magnitude to the effort here, or why it failed to identify these allegedly “similar services” in its proposal, when the RFP clearly required offerors to submit past performance information on “same or similar type contracts.”

CMC also contends that the agency was required to refer this matter to the SBA for a COC, arguing that the agency’s failure to award CMC the contract based upon a neutral past performance rating amounts to a finding of nonresponsibility. However, the agency did not find CMC to be nonresponsible. Furthermore, a neutral past performance rating is not a determination of responsibility or nonresponsibility, but is the rating assigned where there is no record of relevant past performance and cannot be evaluated favorably or unfavorably on past performance by the agency. See Federal Acquisition Regulation (FAR) §15.305(a)(2)(iv); see also FAR §§ 9.104-1(c) (responsibility determination shall not be based on lack of relevant past performance); 15.305(a)(2)(i) (comparative assessment of past performance is separate from responsibility determination).

CMC finally challenges the agency’s selection of a higher-priced proposal for award. However, in a best-value procurement, price is not necessarily controlling; rather, the best-value determination is made based upon the evaluation factors in the RFP. In this regard, price/past performance tradeoffs are permitted when they are reasonable and consistent with the solicitation. Nomura Enter., Inc., B-277768, Nov. 19, 1997, 97-2 CPD ¶ 148 at 4. Nothing in the RFP here required selection of the lowest-priced proposal. To the contrary, offerors were cautioned that, given the evaluation scheme set forth in the RFP, “the lowest priced proposal may not necessarily receive the award.” RFP at 143. The record demonstrates here that the agency reasonably performed a best-value analysis, consistent with the requirements of the solicitation, and balanced Navales’s higher past performance rating and higher price, against CMC’s neutral rating and lower price. After determining that Navales’s proposal strengths outweighed the slight cost premium, the agency reasonably concluded that Navales was the best-value offeror.

The protest is denied.

Anthony H. Gamboa
General Counsel